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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

S&S 1202A

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on AUGUST 23, 2007

Signature

Typed or printed name DARLENE G. PARKER

Application Number

10/726,267

Filed

December 2, 2003

First Named Inventor

Edmund Schuller

Art Unit

3654

Examiner

Langdon, Evan H.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 47,178☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

864-271-1592

Telephone number

AUGUST 23, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ATTORNEY DOCKET NO.: S&S-1202a

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
SCHULLER, ET AL.

Serial No.: 10/726,267

Confirmation No.: 3358

Filed: DECEMBER 2, 2003

For: FRICTION RING FOR A FRICTION
ROLL FOR THE DRIVING OF A SPOOL
ON A TEXTILE MACHINE

) Examiner: Evan Langdon

) Art Unit: 3654

) Customer No.: 22827

PRE-APPEAL BRIEF REQUEST

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Along with a Notice of Appeal filed contemporaneously herewith, Applicants respectfully submit this Pre-Appeal Brief Request for Review in response to the Final Office Action of May 23, 2007.

In the Final Office Action, claims 23, 24, 27-29, 33-35, and 37-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,507,226 to Burke et al. in view of U.S. Patent No. 5,833,776 to Labesky. Independent claim 23 (from which each of the other rejected and pending claims depend) provides as follows:

23. (Previously Presented) An apparatus for friction driving a spool on a textile machine, said apparatus comprising:

a friction roll having at least one rotatable roll body disposed thereon; and
a friction ring carried on said rotatable roll body, said friction ring configured as a belt with two open ends bound together by a fastening apparatus.

As set forth below, Applicants respectfully submit that the Final Office Action omits one or more essential elements required for a prima facie rejection.

First, neither Burke et al. nor Labesky, alone or in combination, teach or suggest all the limitations of independent claim 23. More specifically, neither reference discloses “a belt with two open ends bound together by a fastening apparatus” as expressly required by claim 23. Contrary to the final Office Action, the “nip sleeve 14” of Burke et al. is not a friction ring configured as a belt with two open ends bound together by a fastening apparatus. More specifically, “nip sleeve 14” is a rigid, metal sleeve – not a belt.¹ That is, nip sleeve 14 is constructed from a sleeve that comprises a rigid cylindrical metal or plastic tube 46 (Burke et al. at col. 4, lines 31-54) onto which several other layers are also formed. This rigid, cylindrical sleeve is designed to have an interference fit with nip roller 12 and is installed as a continuous sleeve that must be slid on or off engagable nip roller 12 by moving the sleeve in an axial direction relative to nip roller 12. (Burke et al. at col. 5, lines 12-28). Thus, the Burke et al. disclosure of a rigid, cylindrical sleeve is not a belt that can be flexibly wrapped around a nip roller and bound at two open ends as set forth in the present application. Similarly, Labesky also does not disclose a “belt with two open ends bound together by a fastening apparatus.” Instead, Labesky discloses a Bellville spring - which is a coiled, hardened spring having interlocking free ends and a frustoconical surface. (Labesky Col. 6, lines 23-51). As such, Labesky's Bellville spring is also not a belt that can be wrapped around a friction roll and has two open ends bound together without having to remove the friction roll from its supports. In short, it is respectfully submitted that the Final Office Action fails to set forth any reference, either alone or in

¹ As set forth by Applicants in the Response to Office Action, mailed on February 28, 2007, at page 6.

combination, providing a friction ring configured as “a belt with two open ends bound together by a fastening apparatus” as required by claim 23.

Second, the Final Office Action fails to set forth a proper suggestion or motivation for modifying the sleeve of Burke et al. with the Bellville spring of Labesky. More specifically, MPEP § 2143.01 prohibits a modification of references that would render prior art either unsatisfactory for its intended purpose or that would change the principle operation of a reference. Burke et al. expressly indicates that the “nip sleeve 14 includes a cylindrical outer layer 30 upon which a smooth continuous outer side surface 32 of the sleeve is disposed, as shown in Fig. 3. . . . The smooth outer side surface 32 of the nip sleeve 14 has no gaps or seams other than one more ring shaped angular gaps 36 disposed actually along the length of the nip sleeve, as shown in Figs. 1 and 2.” (Burke et al. at col. 3, line 67 to col. 4, line 8). Having a seamless, gapless, nip roller is in fact an objective of the invention according to Burke et al. (Col. 2, lines 31-34). Accordingly, modifying Burke et al. by using Labesky’s fastening means whereby Labesky attaches the two open ends of a coiled, steel spring creates a seam or joint as shown, for example, in Fig. 8 of Labesky. Clearly, however, such seam or joint would contradict the intended purpose and principle of operation expressly set forth and required by Burke et al. of having a gapless, seamless nip roller.² Accordingly, one of ordinary skill in the art would not make the proposed combination/modification set forth in the Final Office Action, and the only motivation for this combination comes improperly in hindsight from Applicants’ present application.

Third, the Final Office Action fails to set forth proper motivation for modifying Burke et al. by Labesky because such modification would completely contradict the principle of operation

² As set forth by Applicants in the Response to Office Action, mailed on February 28, 2007, at pages 6, 8-9.

of Burke et al. More specifically, Burke et al. specifically states that an advantage of its invention is providing a nip sleeve that is axially slid off the roller without having to completely remove the engageable nip roller. See Col. 3, lines 1-5. As such, modifying Burke et al. to provide interconnected free ends of Labesky's Bellville spring for disconnecting and removal of the sleeve (assuming such a modification is even possible or suggested) completely changes Burke et al.'s express method of removing the sleeve by sliding it axially off the roller.³

Fourth, although required by MPEP § 706.02(j), the Final Office Action fails to set forth a reasonable expectation of success even if Burke et al. and Labesky could be combined or Burke et al. could be modified by Labesky.⁴ Specifically, no such showing was set forth in the Final Office Action. In addition, it is respectfully submitted that the Final Office Action fails to describe how the combination of Burke et al. with Labesky would be possible, much less successful. Regardless, Labesky relates to a Bellville spring, which is a frustoconically-shaped spring. The frustoconical surface could never be used on a friction roll of a textile machine as recited in claim 23 because the frustoconical shape would likely destroy the textile material in other parts of the machine. The Final Office Action recites no motivation or reason for disregarding this part (the frustoconical surface) of the teaching of Labesky (and MPEP § 2141.02 requires considering all teachings of a reference). In addition, even assuming that Labesky's frustoconical surface was not problematic, removal of such a Bellville spring from the friction roller of the textile machine would require moving the ends of the Bellville spring in opposite directions that are basically parallel to the axis of the spring and friction roller. This movement is likely not even possible with a friction ring of a textile machine because of the existing ring tension, the width of the ring, and adjacent elements on the roller. Thus, not only

³ As set forth by Applicants in the Response to Office Action, mailed on February 28, 2007, at page 6.

⁴ As set forth by Applicants in the Response to Office Action, mailed on February 28, 2007, at pages 7-8.

does the Final Office Action fail to identify a reasonable expectation of success from the prior art as required by MPEP § 706.02(J), Applicants respectfully submit that such combination would likely not even work for a textile machine.

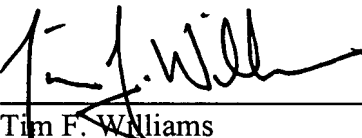
Fifth, Labesky is drawn from nonanalogous art.⁵ In order to use a reference as a basis for rejection of the Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. MPEP § 2141.01(a). No proper basis is provided in the Office Action for how Labesky's Bellville-type spring relates to a problem that was being solved by Applicants. This is particularly problematic given that a frustoconical spring would not work on the friction roller of a textile machine. Thus, Applicants' respectfully submit that the use of such reference as a basis of rejection was improper.

Applicants respectfully submit that the present application is in complete condition for allowance and favorable action, is therefore requested. No fee for an extension of time is included. However, if any fee or extension of time is required to obtain the entry of this request, the undersigned hereby petitions the Commissioner to grant any necessary time and extension and authorize its charging deposit account no. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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⁵ As set forth by Applicants in the Response to Office Action, mailed on February 28, 2007, at page 8.